

WILLIAM K. MONK

IBLA 82-296

Decided November 22, 1982

Appeal from decision of Utah State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease application. U-48310.

Affirmed.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Filing

BLM may properly reject a first-drawn application in a simultaneous oil and gas lease drawing where the applicant has not complied with 43 CFR 3102.2-6, requiring disclosure of any agreement with the lease filing service which assisted the applicant.

APPEARANCES: William K. Monk, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

William K. Monk has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated November 10, 1981, rejecting his noncompetitive oil and gas lease application, U-48310. Appellant's application was drawn with first priority for parcel UT 33 in the January 1981 simultaneous oil and gas lease drawing.

BLM rejected appellant's application because appellant had failed to comply with 43 CFR 3102.2-6 regarding disclosure of any agreement or understanding with an agent where the applicant received the assistance of that agent in connection with the simultaneous filing and the agent is in the business of providing assistance. 1/ BLM noted that appellant's application

1/ On Feb. 26, 1982, the Department published interim final regulations which revised 43 CFR Subpart 3102 effectively eliminating the requirement to file the agency qualifications found in 43 CFR 3102.2-6. 47 FR 8544 (Feb. 26, 1982). In the absence of countervailing public policy reasons or intervening rights, this Board may apply an amended version of a regulation to a pending matter where it benefits the affected party to do so.

was "executed on behalf of William K. Monk by Independent Oil Corporation [Independent] and was signed by Stewart S. Golden as agent." However, BLM indicated that it was unable to locate any document filed in compliance with the regulation. Accordingly, by decision dated September 18, 1981, BLM requested appellant to submit "[a] copy of any service agreement and all other brokerage arrangements between you and any other party." On October 19, 1981, BLM received a copy of the service agreement between appellant and Independent, dated January 13, 1981, and a copy of a list of those people, including appellant, for whom Independent has attorney-in-fact "sheets." The latter document indicates that it was received in the Colorado State Office, BLM, on February 9, 1981. In its November 1981 decision, BLM concluded that appellant had not complied with 43 CFR 3102.2-6 because no submission had been made to the Utah State Office and because appellant's application did not indicate a qualifications file where the information had previously been filed.

[1] The Departmental regulations provide three alternative methods of complying with the requirement that an applicant notify BLM of any agreement or understanding with an agent. Arthur H. Kuether, 65 IBLA 184 (1982). Under 43 CFR 3102.2-6(a), an applicant is required to submit with his lease application

a personally signed statement as to any understanding, or a personally signed copy of any written agreement or contract under which any service related to Federal oil and gas leasing or leases is authorized to be performed on behalf of such applicant. Such agreement or understanding might include, but is not limited to: a power of attorney; a service agreement setting forth duties and obligations; or a brokerage agreement.

In the alternative, under 43 CFR 3102.2-6(b), an applicant may submit with his lease application a uniform agreement entered into between several applicants and an agent, and must, within 15 days thereafter, see to it that a list of the names and addresses of all applicants participating under the agreement is filed in the state office. Finally, under 43 CFR 3102.2-1(c), an applicant may place evidence of agency qualifications on file and make reference in future simultaneous filings, by assigned serial number, to such evidence.

In his statement of reasons for appeal, appellant contends that he has complied with the regulation regarding disclosure of agency qualifications, inasmuch as he has been assured by Independent that "the filing of my applications were in complete accordance with all applicable Federal regulations." Appellant states that Independent informed him that failure to comply would have resulted in rejection of the application prior to the simultaneous oil and gas lease drawing.

fn. 1 (continued)

See James E. Strong, 45 IBLA 386 (1980); Wilfred Plomis, 34 IBLA 222, 228 (1978); Henry Offe, 64 I.D. 52, 55-56 (1957). In this case, however, it is not possible to do so because of the intervening rights of the second and third priority applicants.

Despite appellant's assertions to the contrary, there is no evidence in the record that appellant has complied with 43 CFR 3102.2-6. Both 43 CFR 3102.2-6(a) and (b) require that the appropriate document be submitted with the lease application. Marilyn S. Watson, 67 IBLA 67 (1982). There is no evidence that appellant did so. Finally, there is no indication on appellant's application of a qualifications file where the appropriate document had previously been filed, whether in the Colorado State Office or the Utah State Office. Such reference is mandatory where an applicant seeks to comply with 43 CFR 3102.2-1(c). Zappia Exploration Group, 60 IBLA 336 (1981).

In the absence of compliance with 43 CFR 3102.2-6 or 43 CFR 3102.2-1(c), we conclude that BLM properly rejected appellant's application. 2/ Arthur H. Kuether, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

2/ We note that appellant is incorrect in his assumption that failure to comply with 43 CFR 3102.2-6 results in an automatic rejection of the application prior to the simultaneous drawing. The applicable regulation, 43 CFR 3112.6-1, specifically provides that "[r]ejection," including rejection for failure to file evidence of agency qualifications, is an "adjudicatory process which follows selection."

